

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

06-15-07  
04:59 PM

Order Instituting Rulemaking to Consider the Adoption of  
a General Order and Procedures to Implement the Digital  
Infrastructure and Video Competition Act of 2006.

R.06-10-005  
(Filed October 5, 2006)

**PHASE II  
REPLY COMMENTS OF  
AT&T CALIFORNIA**

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June 15, 2007

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AT&T California, pursuant to the **Scoping Memo For Phase II And Request For Comments; Ruling On Notice Of Intent To Claim Intervenor Compensation**, dated May 7, 2007 (hereinafter, “Scoping Memo”), provides the following reply comments for Phase II of this proceeding.

**I. REPLY TO OPENING COMMENTS OF OTHER PARTIES**

AT&T California responds below, in the order established in the Scoping Memo, to certain issues raised by parties in their opening comments. Silence on an issue does not indicate agreement.

**A. Proposed Additional Reporting Requirements**

The Division of Ratepayer Advocates (“DRA”) requests that the monitoring proposals it has made in the URF proceeding also be adopted here.<sup>1</sup> Specifically, DRA requests that video franchise holders be required to report: (1) cable and video subscribership information by census tract; and (2) service pricing by market and/or census tract.<sup>2</sup> Both of these proposed requirements are contrary to the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA” or “the Act”).

As AT&T California noted in its Opening Comments, DIVCA is designed to benefit Californians by unleashing market forces, not closely regulating video franchise holders.<sup>3</sup> To this end, DIVCA makes very clear that the Commission cannot “impose any requirement on any holder of a state franchise *except as expressly provided in [DIVCA]*.”<sup>4</sup> DRA’s proposed

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<sup>1</sup> DRA Opening Comments, p. 3; *see also id.* at fn. 6.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> AT&T Opening Comments, pp. 1-2.

<sup>4</sup> § 5840(a) (emphasis added). All code references are to the Public Utilities Code, unless otherwise indicated.

reporting requirements would violate this prohibition because DIVCA does not expressly provide for reporting of (1) cable or video subscribership information by census tract, or (2) service pricing information. Moreover, the Commission already requires franchise holders to report the statewide number of video subscribers,<sup>5</sup> because statewide subscribership determines the number of Community Centers that must be served.<sup>6</sup> However, there are no DIVCA requirements triggered by video subscribership at a tract level, and such information is highly proprietary. Nor are there any DIVCA requirements relevant to service pricing. In fact, DIVCA prohibits the Commission from regulating “the rates, terms, and conditions of video services....”<sup>7</sup> Thus, DRA’s proposed reporting requirements are plainly contrary to DIVCA and could yield no relevant information.

The California Community Technology Policy Group (“CCTPG”), Latino Issues Forum (“LIF”), The Utility Reform Network (“TURN”), and Greenlining request that the Commission impose additional reporting requirements relating to communications technologies and broadband speeds.<sup>8</sup> Specifically, these organizations propose that video providers be required, for both broadband and video services, to “detail which specific wireline and/or non-wireline technologies they offer in each Census Tract, with information on the broadband speed that each technology is able to deliver.”<sup>9</sup>

With respect to communications technologies, DIVCA requires that franchise holders report, on a census tract basis, “[w]hether the broadband provided by the holder utilizes wireline-

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<sup>5</sup> G.O. 169, Section VII.D.(2).

<sup>6</sup> *See* § 5890(b)(3).

<sup>7</sup> § 5820(c). DIVCA imposes this ban “except as explicitly set forth in [DIVCA].” Because DIVCA does not explicitly set forth any Commission authority to regulate video rates, it has none.

<sup>8</sup> CCTPG/LIF/TURN Opening Comments, pp. 4-5; Greenlining Opening Comments, p. 4.

<sup>9</sup> CCTPG/LIF/TURN Opening Comments, p. 5; *see also* Greenlining Opening Comments, p. 4.

based facilities or another technology.”<sup>10</sup> The Commission has already expanded this requirement, beyond just reporting whether a technology other than wireline is used, to include a list of the type(s) of non-wireline broadband technologies used in each Census Tract.<sup>11</sup> The CCTPG *et al.* proposal would go even further beyond DIVCA’s scope by swelling that requirement to include: (1) video, in addition to broadband; (2) wireline, in addition to non-wireline; and (3) the broadband speed each technology is able to provide. None of these is a requirement of DIVCA, thus all are contrary to DIVCA’s prohibition on the imposition of “any requirement on any holder of a state franchise *except as expressly provided in [DIVCA]*.”<sup>12</sup>

In addition to contravening DIVCA, the proposal to specify wireline technology is nonsensical. Under DIVCA *wireline is the technology*, as the requirement to report “[w]hether the broadband provided by the holder utilizes wireline-based facilities *or another technology*”<sup>13</sup> makes clear. The proposal to impose broadband speed reporting requirements also contradicts the structure and intent of DIVCA. DIVCA defines “broadband” as a speed of more than 200 kilobits per second,<sup>14</sup> thus any speed beyond 200 kilobits per second is entirely irrelevant under DIVCA. Finally, none of these expanded reporting requirements would produce any information to aid the Commission in enforcing any requirements of DIVCA.

Greenlining further requests that the Commission require “cable franchise holders” to annually report the following specific information:<sup>15</sup>

1. How each franchisee has helped close the digital divide;

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<sup>10</sup> § 5960(b)(1)(C).

<sup>11</sup> G.O. 169, Section VII.C.1.(2)(a). AT&T California continues to object that this expansion is contrary to DIVCA.

<sup>12</sup> § 5840(a) (emphasis added).

<sup>13</sup> § 5960(b)(1)(C).

<sup>14</sup> See § 5830(a) (incorporating FCC definition) and G.O. 169, fn. 2 (providing FCC definition).

<sup>15</sup> Greenlining Opening Comments, p. 2.

2. How each franchisee has funded access to new technologies by underserved communities;
3. How each franchisee has increased diversity at all levels of employment and management;
4. How each franchisee had created business opportunities for small businesses, small minority and women-owned businesses; and
5. How each franchisee has provided full content access to underserved and minority communities.

AT&T applauds Greenlining's goals. However, as discussed above, the reporting requirements Greenlining proposes are not found in DIVCA and thus contravene its clear prohibition on the imposition of "any requirement on any holder of a state franchise *except as expressly provided in [DIVCA]*."'<sup>16</sup>

For the record, AT&T must correct the claim of CCTPG *et al.*, based on section 5890(f)(4), that "[t]here is also a legislative expectation for franchise holders to demonstrate 'a substantial and continuous effort' to meet build-out requirements."'<sup>17</sup> As indicated in our Opening Comments, and as recognized by other commentors,<sup>18</sup> subsection (f)(4) of section 5890 does not generally require franchise holders to demonstrate a "substantial and continuous" effort to meet build-out requirements. The "substantial and continuous" showing referenced in subsection (f) is only necessary where a franchise holder is seeking an *extension* to meet the requirements of section 5890.<sup>19</sup> If and when a franchise holder seeks such an extension, the franchise holder will bear the burden of showing a "substantial and continuous" effort, but DIVCA provides no authority to require all holders to make this showing at all times.

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<sup>16</sup> § 5840(a) (emphasis added).

<sup>17</sup> CCTPG/LIF/TURN Opening Comments, p. 4.

<sup>18</sup> SureWest Opening Comments, p. 5; Small LECs Opening Comments, p. 5.

Finally, AT&T must correct the implication of CCTPG, LIF, TURN, and Greenlining that section 5890(e) of DIVCA imposes fiber deployment requirements.<sup>20</sup> To the contrary, section 5890(e) imposes certain requirements *if* a holder is “predominantly deploying fiber optic facilities to the customer’s premise” (§ 5890(e)(1)), and other requirements if a holder is not (§ 5890(e)(2)). Predominant fiber optic deployment is a precondition to a DIVCA requirement, not a requirement in itself.

**B. Proposed Additional Enforcement Requirements**

The California Cable and Telecommunications Association (“CCTA”), obviously searching for a vehicle for further delaying or hindering competitive entry, claims that additional processes are necessary for the enforcement of build-out requirements.<sup>21</sup> This proposal is outside the scope of Phase II, as set forth in the Scoping Memo, thus it would be procedurally improper for the Commission to consider it here. In any event, there already are processes to enforce build-out requirements. Decision 07-03-014 discusses in great depth the enforcement processes for build-out requirements.<sup>22</sup> No additional processes are necessary or appropriate.

**C. Renewal Of Video Franchises**

AT&T California agrees with the comments of SureWest and the Small LECs that, although the time is not currently ripe, the Commission should establish renewal rules a reasonable period of time before current franchises expire.<sup>23</sup>

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<sup>19</sup> § 5890(f).

<sup>20</sup> CCTPG/LIF/TURN Opening Comments, p. 5; Greenlining Opening Comments, p. 4.

<sup>21</sup> CCTA Opening Comments, pp. 7-8.

<sup>22</sup> D.07-03-014, *mimeo*, pp. 179-181.

<sup>23</sup> SureWest Opening Comments, pp. 6-7; Small LECs Opening Comments, pp. 5-6.

## II. CONCLUSION

For the reasons set forth above, and in our opening comments, AT&T California requests the Commission refrain from imposing additional reporting requirements (or enforcement processes), correct an omission to General Order 169, clarify that not all its Rules of Practice and Procedure apply to DIVCA proceedings, and address renewal issues a reasonable period of time before current franchises expire.

Respectfully submitted,

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DATED: June 15, 2007



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the **PHASE II REPLY COMMENTS OF AT&T CALIFORNIA** in **R.06-10-005** by electronic mail, hand-delivery and/or by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list.

Executed this 15th day of June, 2007 at San Francisco, California.

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